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CONTENTS

Legal Department File No. 1 C. Hoarding & Profit /45

Sr. No.	Compilation No.	Subject	pages
		Opinions under the Hoarding and Profit-eering Prevention Ordinance, 1943.	
1	C. No. 11-Confl 11/1/1945	Section 6. Whether section 6 as amended has retrospective effect.	1-2
2	C. No. 6173 21/8/1945	Section 3, 4(1)(c) and 13. The Indian Contract Act, Section 23 · Agreement for sale of articles for a price in excess of that fixed under the Act.	3-4
3	R.I. No. 8278 9/10/1945	Inclusion of clause in the Department of supply General Condition of contracts for bidding the contractors from quoting higher rates to Government than they are entitled to	5-8
4	C. No. 9701 21/11/1945	Section 14. Whether there would be any legal Objection to sanction for prosecution being granted by Government befor a charge sheet is sent up by the Police.	9-10

S c.
V.R.K.
10/7/56

Office of the R.L.A.

The Government of India is keen that the point involved in this case namely whether section 6 of the Hoarding and Profiteering Ordinance, 1943, as amended has retrospective effect should be taken to the High Court for decision and problem is to do so as soon as possible. If the Magistrate acquits the accused in Emperor Vs. Dharamdas Jhamatmal, as appeal in that case may be the best method. (It is understood that judgment in that case is expected soon and it is now too late to go in revision) Otherwise prosecution in the present case may be the best method. The question of appeal in Emperor Vs. Dharamdas Jhamatmal may be decided as soon as possible and then the proper course of action in the present case may be considered.

Id/- P.N.H.
10/1/45

U.R. to F.D. (Supply) No. 11-Confl, dated the 11th Jan. 1945.

4 c.
V.R.K.
10/7/56

In agreements relating to the purchase of stores for Government it is proposed by G.D. to insert the following condition :-

A "The price quoted by the contractor shall not in any case exceed the controlled price, if any, fixed by the Government or the reasonable price which is permissible for him to charge to a private individual for the same class and description of goods under the provision of clause 6 of the Hoarding and Profiteering Prevention Ordinance, 1943, as finnaly amended. The tenderer shall certify that to the best of his belief, the price quoted by him is permissible under the Ordinance. If there are no reasonable sources to ascertain the price permissible under the Ordinance the purchaser will have the option either to cancel the contract or to revise ther rates if at a later date it is found that the price quotel is knowingly or through ignorance above the price admissible under the Ordinance."

B

The question raised for the consideration of the R.L.A. is whether the aforesaid stipulation especilly the portion marked 'B' is in order from the legal point of view.

2. Section 4(1)(c) of the Hoarding and Profiteering Prevention Ordinance, 1943, prohibits sale or offer for sale or otherwise disposal to any person of any article for a price or at a rate exceeding the maximum fixed by notification under clause (c) of sub-section (1) of section 3; and under sub-section (3) of section 4 where any article is sold, offered for sale or otherwise disposed of in contravention of sub-section (1) by a dealer or producer through any person employed by him or acting on his behalf, such person and also, unless they prove that they exercised due diligence to prevent such contravention, the dealer or producer, as the case may be, and any person having charge on behalf of the dealer or producer, of the place where the contravention occurred, shall be liable to the punishment provided by sub-section (1) of section 13 whether or not they were present when the contravention occurred.

4 c.
V.R.K. 10/7/56

Under section 23 of the Indian Contract Act an agreement which is of a nature that if permitted it would defeat the provisions of any law is unlawful and void.

An agreement ~~m~~ for sale of articles for a price in excess of ~~that~~ that fixed under the Hoarding and Profiteering Prevention Ordinance, 1943, is clearly unlawful and void. Consequently it appears that no such stipulation as suggested by G.D. would be lawful, firstly because it is likely to be construed as an exemption from prosecution under the Hoarding and Profiteering Prevention Ordinance and secondly because it is obviously unlawful and void under section 23 of the Indian Contract Act. It appears therefore that it is inadvisable to insert any such stipulation in the contract. If the contractor has quoted prices in excess of those fixed under the Hoarding and Profiteering Prevention Ordinance he would be clearly liable to be prosecuted; and if Government has purchased articles at the stipulated rates in ignorance of the limits fixed under the Hoarding and Profiteering Prevention Ordinance, Government can treat the contract as void and would not be liable for damages. Government would at the mot be liable fo to pay the price of the articles as fixed under the Hoarding and profiteering Prevention Ordinance.

O/C. Sd/-
25/8/45

Remembrancer of Legal Affairs.

U.R. to G.D. No. 6173, dated the 21st August 1945.

4 c.
V.R.K.
10/7/56

Office of the R.L.A.

It appears that under P.D.(Supply) Order No. 367/10020/IV dated 30th April 1945 Government has directed that the Police in Bombay City as well as in the Province are not to effect any arrest of an accused person or persons for the breach of any of the provisions of the Hoardin & Profiteering Prevention Ordinance, Drugs Control Order and Cotton Cloth & Yarn (Control) Order before they obtain sanction of Government to prosecute. In his letter at page 1 ante the Commissioner of Police requests Government to amend that Order in view of the fact that the prosecution of a person can be deemed to be instituted only when a charge sheet is sent up.

2. Section 14 of the Hoarding & Profiteering Prevention Ordinance, clause 16 of the Drugs Control Order and clause 23 of the Cotton Cloth & Yarn (Control) Order which are worded in almost identical terms provide that the previous sanction of Government is a pre-requisite to the institution of a prosecution. "'Institute' when applied to legal proceedings signifies the commencement of the proceedings. The institution of a legal proceeding in a court plainly comprehends the filing of a proper plaint or complaint, process for bringing the necessary parties into court, and judicial inquiry according to the usual rules and practices of courts. Criminal proceedings cannot be said to be instituted until a formal charge is openly made against the accused by a complaint before a Magistrate" (See Iyer's Law Lexicon).

4 c.
V.R.K.
10/7/56

This interpretation of 'institution of a prosecution' is fully supported by the recent judgment of Weston J. in Cr. Revision Application No. 196 of 1945. It appears therefore that there would be no legal objection to sanction being granted by Government before a charge sheet is sent up by the Police.

C.C. Sd/-
20/11/45

Remembrancer of Legal Affairs.

U.R. to F.D.(S.) No. 8703 dated the 21st November 1945.

4 c.
V.R.K.
10/7/56